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EXAMINER

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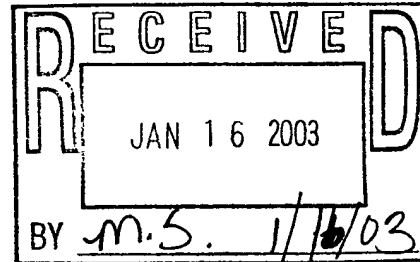
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 25

Application Number: 09/334,256
Filing Date: June 16, 1999
Appellant(s): RICHARDSON ET AL.

MAILED

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Mr. Jon D. Grossman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/21/2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The Appellants' statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The Appellants' brief includes statements that:

- a. claims 1, 2-4, 7, 8, and 11-23 stand or fall together;
- b. claims 9 and 23 stand or fall together; and
- c. claims 10 and 22 stand or fall together.

The Appellants' brief also provides that reasons are as set forth in 37 CFR 1.192(c)(7) and (c)(8).

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(8) Appellants' Affidavit of Commercial Success

Receipt is acknowledged for Appellants' Affidavit of Commercial Success under 37 CFR 1.132 (see Paper #18), filed on 04/09/2002. However, such affidavit has not been seasonably filed pursuant to MPEP 716.01(A). This Affidavit has been placed of record in the case; however, it has not been considered.

(9) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(10) Prior Art of Record

Duncan, William R.; "A Guide To The Project Management Body of Knowledge;" PMI Standards Committee, Project Management Institute, 1996

(11) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims.

Claims 1-4 and 7-23 were rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 12, and repeated below. Appellants' after Final amendments D and E (see Papers 15 and 19, respectively) were not specifically addressed in the rejection. However, the amended claims have been entered and are encompassed by the Final Rejection, as presented below:

1. Claims 1-4 and 7-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over William R. Duncan, "A Guide to the Project Management Body of Knowledge," Project Management Institute, 1996 (hereafter referred to as **Duncan**).

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2. Appellant has become his own lexicographer and defined his own terms for features of his invention. For clarity and use in this examination, Examiner uses the following definitions for the indicated terms, based on their definition/discussion in the specification:

- **tasking horizon** - a window of time over which tasks can be scheduled (pg. 11).

Examiner interprets this to be synonymous with *the duration of time included in the planned time span defined by the task start and stop dates.*

- **verb** - designed to capture the type of dialogue that a worker would use to explain why a task was or was not started and/or completed as planned (pg. 12), or used to classify the reasons for churn, or in other words the reason for why the task was performed as planned or not performed as planned (pg. 14).

- **churn** - the movement of tasks in relation to the tasking horizon (pg. 8), or the difference between the planned start and stop dates and the actual start and stop dates (pg. 14)..

Claim 1: **Duncan** discloses:

- breaking a project into multiple tasks (pg. 30-32, para. 3.3.2; pg. 59, para. 6.1);
- activating a current tasking horizon (pg. 30-32, para. 3.3.2; pg. 170), described as target finish date and schedule development;
- selecting a language for at least one of said multiple tasks (pg. 46, para. 4.3.3.3), where verbs and language are encompassed by lessons learned;

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- receiving an actual date for at least one of said multiple tasks (pg. 31; fig. 3-5 [6.4]; pg. 159), which is disclosed as schedule development, activity definition and actual start date;
- receiving an estimated date for said at least one task (pg. 31; fig. 3-5 [6.3]), which is disclosed as activity duration estimating; and
- receiving language that corresponds to said actual date, wherein a verb describes a reason for said actual date and for said churn (pg. 108 para. 10.3.2), in analyses involving comparing actual project results to planned or expected results.

Duncan does not specifically disclose calculating a first negative churn if said received estimated date is created in or moved into said current tasking horizon; calculating a first positive churn if said estimated date is deleted or moved out of said current tasking horizon; calculating a second positive churn if said received estimated date exists in said current tasking horizon and said received actual date is moved out of or is created outside of said current tasking horizon; nor calculating a third positive churn if said received actual date is moved out of or is created outside of said current tasking horizon and an accompanying received estimated date is not in said current tasking horizon.

However, **Duncan** discloses tools to perform variance analysis involving comparing actual project results to planned or expected results, trend analysis, earned value analysis, performance reports, change requests (pg. 30-32 para. 3.3.2-3.3.4; pg. 41-42, para. 4.1.3; pg. 107-109 para. 10.3-10.3.3; pg. 110, fig. 10-3; pg. 113, para. 11.1.1). Therefore, it would have been obvious to one skilled in the art at the time the

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invention was made to modify **Duncan** to disclose the functionality necessary to calculate a first negative churn if said received estimated date is created in or moved into said current tasking horizon; calculate a first positive churn if said estimated date is deleted or moved out of said current tasking horizon; calculate a second positive churn if said received estimated date exists in said current tasking horizon and said received actual date is moved out of or is created outside of said current tasking horizon; and calculate a third positive churn if said received actual date is moved out of or is created outside of said current tasking horizon and an accompanying received estimated date is not in said current tasking horizon, through the performance reporting mechanisms provided by the invention of **Duncan**, since they are already encompassed by **Duncan**.

Claim 2: **Duncan** discloses classifying said received verb as employee dependent (pg. 95, para. 9.1.1.2-3).

Claim 3: **Duncan** discloses classifying said received verb as task dependent (pg. 61-62 para. 6.1.3).

Claim 4: **Duncan** discloses classifying said received verb as environment dependent (pg. 61-62 para. 6.1.3).

Claim 7: **Duncan** discloses:

- comparing said tasks of said project to previously performed tasks (pg. 113, para. 11.1.1.3);

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- extracting previously performed task completion data (pg. 113, para. 11.1.1.3);
- and
- computing an expected task completion time based at least in part on said previously performed task completion data (pg. 113, para. 11.1.1.1-3).

Claim 8: **Duncan** discloses

- comparing said tasks of said project to previously performed tasks (pg. 113, para. 11.1.1.3);
- extracting a risk factor associated with said previously performed tasks (pg. 113, para. 11.1.1.3); and
- computing a risk factor based at least in part on said extracted risk factor (pg. 115-117, para. 11.2; fig. 11-2).

Claims 9 and 23: **Duncan** discloses:

- breaking a project into multiple tasks (pg. 30-32, para. 3.3.2; pg. 59, para. 6.1);
- selecting a current tasking horizon (pg. 30-32, para. 3.3.2; pg. 170), described as target finish date and schedule development;
- selecting at least two verbs for said first task (pg. 46, para. 4.3.3.3), where verbs and language are encompassed by lessons learned;
- selecting at least two verbs for said second task (pg. 46, para. 4.3.3.3), where verbs and language are encompassed by lessons learned;
- assigning said first task to a first task assignment station (pg. 97, para. 9.1.3.1-4);

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- assigning said second task to a second task assignment station (pg. 97, para. 9.1.3.1-4);
- receiving a predicted start date and a predicted completion date for said first task from said first task assignment station (pg. 31; fig. 3-5 [6.3]), which is disclosed as activity duration estimating;
- receiving a predicted start date and a predicted completion date for said second task from said second task assignment station (pg. 31; fig. 3-5 [6.3]), which is disclosed as activity duration estimating;
- receiving an actual start date and a verb for said first task (pg. 31; fig. 3-5 [6.4]; pg. 159), which is disclosed as schedule development, activity definition and actual start date; and
- receiving an actual start date and a verb for said second task (pg. 31; fig. 3-5 [6.4]; pg. 159), which is disclosed as schedule development, activity definition and actual start date.
- comparing said predicted start and stop dates with said actual start and stop dates (pg. 107-108, para. 10.3; pg. 109 fig. 10-2; pg. 110 fig. 10-3; pg. 113, para. 11.1.1);
- computing a risk factor for said first task (pg. 115-118, para. 11.2; fig. 11-1; fig. 11-2); and
- computing a risk factor for said second task (pg. 115-118, para. 11.2; fig. 11-1; fig. 11-2).

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Duncan does not specifically disclose computing churn of said first task, or computing churn for said second task. However, **Duncan** does disclose the functionality for computing churn for said tasks (pg. 107-108, para. 10.3; pg. 109 fig. 10-2; pg. 110 fig. 10-3; pg. 113, para. 11.1.1). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Duncan** to specifically disclose computing churn of said first task, and computing churn for said second task, because **Duncan** does disclose the necessary functionality for these computations and these specific features may enhance the desirability of the invention to potential users.

Claim 10 and 22: **Duncan** discloses:

- a management module for:
 - breaking a project into tasks (pg. 30-32, para. 3.3.2);
 - selecting a tasking horizon (pg. 30-32, para. 3.3.2;), through schedule development; and
 - assigning at least two verbs for at least one of said tasks (pg. 30-32, para. 3.3.2), through activity definition and activity sequencing;
- a task assignment station (pg. 96, fig. 9-2) for:
 - receiving said at least one task (pg. 42, para. 4.21.3), through responsibility assignments and project planning;
 - entering a predicted start date and stop date for said at least one task (pg. 42, para. 4.21.3), through establishing a scheduled start date; and

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- entering an actual start date and stop date (pg. 157; pg. 159; pg. 70; fig. 6-7 and 6-8), through representation of activity/project dates on graphs and charts;
- said management module and said assignment station are operationally connected (pg. 8-9-10, para. 1.4-5; fig. 1-2); and
- said management module:
 - receives predicted start and stop dates and said actual start and stop dates (pg. 31; fig. 3-5 [6.3]; pg. 31; fig. 3-5 [6.4]; pg. 159); and
 - computes a churn (pg. 107-108, para. 10.3; pg. 109 fig. 10-2; pg. 110 fig. 10-3; pg. 113, para. 11.1.1); and
- -- assigns a risk factor to said task based on at least one of said verbs having a reason associated therewith used to describe said churn (pg. 61 para. 6.1.1; pg. 115-118, para. 11.2; fig. 11-1; fig. 11-2).

Duncan does not specifically disclose computing churn. However, **Duncan** does disclose the functionality for computing churn (pg. 107-108, para. 10.3; pg. 109 fig. 10-2; pg. 110 fig. 10-3; pg. 113, para. 11.1.1). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Duncan** to specifically disclose computing churn, because **Duncan** does disclose the necessary functionality for this computation and this specific feature may enhance the desirability of the invention to potential users.

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Claim 11: **Duncan** discloses modifying said computed risk factor based on a subsequent churn value (pg. 165), through mitigation.

Claim 12: **Duncan** discloses said method results in a reduction of said churn (pg. 165), through mitigation.

Claim 13: **Duncan** discloses said actual dates comprise an actual start date and an actual stop date (pg. 159).

Claim 14: **Duncan** discloses said received estimated dates comprise an estimated start date and an estimated stop date (pg. 169-170).

Claim 15: **Duncan** does not specifically disclose assigning a risk factor to a second task which is dependent upon a first task. **Duncan** does disclose risk is interrelated with scheduled events (pg. 30-32, para. 3.3.2). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify Duncan to use a risk factor equal to a percentage of the time between said predicted start and stop dates (or various other representations to portray task interdependencies, as may be required by a user), because this is an obvious variation that is encompassed by the Duncan invention.

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Claim 16: **Duncan** discloses said second task is dependent on said first task (pg. 30 para. 3.3.2), through the functionality of relationships of planning processes.

Claim 17: **Duncan** discloses:

- breaking a project into multiple tasks (pg. 30-32, para. 3.3.2; pg. 59, para. 6.1);
- selecting a current tasking horizon (pg. 30-32, para. 3.3.2; pg. 170), described as target finish date and schedule development;
- selecting at least two verbs for at least one of said task (pg. 46, para. 4.3.3.3), where verbs are encompassed by lessons learned;
- receiving a predicted start date and a predicted stop date for said first task for at least one task (pg. 31; fig. 3-5 [6.3]), which is disclosed as activity duration estimating;
- receiving an actual start date and a verb for said at least one task (pg. 31; fig. 3-5 [6.4]; pg. 159), which is disclosed as schedule development, activity definition and actual start date; and
- receiving one of at least two verbs that corresponds to said actual start and stop dates, wherein said verb describes at least one reason for said actual start and stop dates (pg. 31; fig. 3-5 [6.4]; pg. 159), which is disclosed as schedule development, activity definition and actual start date;
- comparing said predicted start and stop dates with said actual start and stop dates (pg. 107-108, para. 10.3; pg. 109 fig. 10-2; pg. 110 fig. 10-3; pg. 113, para. 11.1.1);

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- computing churn of at least one task (pg. 107-108, para. 10.3; pg. 109 fig. 10-2; pg. 110 fig. 10-3; pg. 113, para. 11.1.1);
- reviewing said churn in view of at least one verb and assigning a risk factor to said task based on said review (pg. 30-32, para. 3.3.2; pg. 115-118, para. 11.2; fig. 11-1; fig. 11-2).

Duncan does not specifically disclose computing churn of at least one task.

However, **Duncan** does disclose the functionality for computing churn of at least one task (pg. 107-108, para. 10.3; pg. 109 fig. 10-2; pg. 110 fig. 10-3; pg. 113, para. 11.1.1).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Duncan** to specifically disclose computing churn of at least one task, because **Duncan** does disclose the necessary functionality for this computation and this specific feature may enhance the desirability of the invention to potential users.

Claim 18: **Duncan** does not specifically disclose said risk factor is equal to a percentage of the time between said predicted start and stop dates. **Duncan** does disclose risk is interrelated with scheduled events (pg. 30-32, para. 3.3.2). It would have been obvious to one skilled in the art at the time the invention was made to modify **Duncan** to use a risk factor equal to a percentage of the time between said predicted start and stop dates, because this is an obvious variation that is encompassed by the **Duncan** invention and may provide additional clarity for scheduling- and risk-related activities.

Claim 19: **Duncan** discloses said previous risk factor is task dependent (pg. 30-32, para. 3.3.2; pg. 115-118 para. 11.2; fig. 11-1; fig. 11-2).

Claim 20: **Duncan** does not specifically disclose said apparatus classifies said churn as positive churn or negative churn. **Duncan** does disclose the functionality encompassed by said apparatus classifies said churn as positive churn or negative churn (pg. 30-32 para. 3.3.2; pg. 108 para. 10.3.1; pg. 115-118 para. 11.2; fig. 11-1; fig. 11-2), through the mechanisms of variance analysis, trend analysis, and schedule variance.

Claim 21: **Duncan** discloses said apparatus is utilized in a churn monitoring program to reduce said churn (pg. 108 para. 10.3.1; pg. 115-118 para. 11.2; pg. 165; fig. 11-1; fig. 11-2), through at least the processes of variance analysis, trend analysis, earned value analysis, and mitigation.

(12) Response to Argument

Appellants argue, at pg. 5-8 of the Appeal Brief (see Paper #24), that the definitions for the terms "tasking horizon" and "verb" used by examiner in the rejection for the purpose of identifying appropriate sections of the prior art reference (**Duncan**) that disclose appellants' invention are not correct or adequate. The arguments are cached in various approaches that attempt to portray the differences between Appellants' and **Duncan's** inventions or the inadequacies of **Duncan**.

Examiner disagrees. Appellants have redefined the examiner's terms. Examiner stated "the duration or time included in the planned time span defined by the

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task start and stop dates," i.e., the duration of time included in the planned time span defined by all of the start and stop dates for all of the tasks of a project or activity (emphasis added). Appellants have redefined examiner's definition to pertain to only one task in an activity or project encompassing multiple tasks. Additionally, Duncan discloses a Glossary of terms (see pg. 157) that may be used with the Duncan invention and that encompasses presenting verbs (and other terms) used during the various stages of an activity or project. Duncan also defines activity as "an element of work performed during the course of a project. An activity normally has an expected duration, an expected cost, and expected resource requirements. Activities are often subdivided into tasks" at pg. 159. Examiner asserts that the terminology presented by examiner encompasses Appellants' definitions of tasking horizon and verb. Therefore, examiner maintains the rejection.

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Appellants argue, at pg. 8-9, that the Final office action acknowledges that many features of Appellants' claimed invention are not specifically taught in Duncan, it alleges that "it is obvious that the [claimed invention] is disclosed by the invention of Duncan." Not only, however, does the final rejection fail to explain how Duncan discloses or suggests many of the claimed elements supposedly rendered 'obvious by Duncan, but it also cites to sections in Duncan out of context and relies upon other sections which are inapplicable when considered in light of the actual definitions of Appellants' terms as discussed above.

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Examiner disagrees. See response to the Appellants' arguments above pertaining to "Tasking Horizon" and "Verb" and the Final Rejection. Also, examiner asserts that the disclosures of Duncan as identified in the Final Action, while not identical to those of Appellants, disclose Appellants' invention. Therefore, Examiner maintains the rejection.

Examiner

Appellants argue, at pg. 10-11, that while estimated start and stop dates for project activities are applicable concepts within the overall scheme disclosed in both the present application and Duncan, Appellants' claimed invention defines an additional plane of reference by analyzing movements of estimated dates and differences between estimated dates and actual dates against a fixed, task-independent planning window. This additional plane of reference is absent entirely from Duncan. Thus, contrary to the assertions in the final rejection, the passages cited from Duncan do not and cannot meet the claimed step or module for "activating" or "selecting a tasking horizon" recited in independent claims 1, 9, 10, 17, 22 and 23, and as discussed above in section A.2. of this Appeal Brief.

Examiner disagrees. Duncan discloses tools to perform variance analysis involving comparing actual project results to planned or expected results, trend analysis, earned value analysis, performance reports, change requests (pg. 30-32 para. 3.3.2-3.3.4; pg. 41-42, para. 4.1.3; pg. 107-109 para. 10.3-10.3.3; pg. 110, fig. 10-3; pg. 113, para. 11.1.1). In these disclosures, Duncan discloses functionality for the claimed aspects of Appellants' invention. Therefore, examiner maintains the rejection.

nce analysis
lts, trend analysis,
32 para. 3.3.2-
g. 10-3; pg. 113,
the claimed
jection

Appellants argue, at pg. 13-14, that Duncan defines the term "actual start date," but does not disclose receiving an actual date. In fact, the terms "Actual Finish Date" and "Actual Start Date" are not found anywhere in the entire book, other than on page 159.

Examiner disagrees. Examiner notes that the terms "actual start date" and "actual finish date" are not specifically stated in Duncan. However, Duncan does disclose, at Figure 6-1, 6.4 Schedule Development and 6.5 Schedule Control. Examiner asserts that the Appellants' aspect of "Planned Start Date" is encompassed by Duncan's disclosure at 6.4.3.1 Outputs, and "Actual Start Date" is encompassed by Duncan's disclosure at 6.5.3.1 Schedule Updates. Therefore, Examiner maintains the rejection.

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Appellants argue, at pg. 14-15, that the step of computing a risk factor occurs based on a verb received by the modeling system in connection with an actual date associated with a task. In order to obtain an actual date, at least a portion of a task within a project must have been executed. Duncan, as cited in the final rejection, does not teach or suggest the claimed function/step of computing or assigning a risk factor based on a selected verb.

Examiner disagrees. Duncan does present the process of risk identification, quantification, response development and response control. Duncan then proceeds to provide additional disclosure on the use and response of project risk management

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during the course of the project. Duncan discloses risk identification, quantification and response development as planning processes. Then Duncan discloses risk response control (11.4) as responding to changes in risk over the course of the project (pg. 33 Fig. 3-6). This encompasses the claimed function/step of computing or assigning a risk factor. The use of verbs is addressed in the above Response to Arguments. Therefore, Examiner maintains the rejection.

Appellants argue, at pg. 15-17, that Duncan does not suggest the claimed invention as a whole. ... In particular, Duncan is a broad, conceptually-based outline for project managers, which offers only a bird's eye view of an overall project management plan. Duncan does not teach or suggest all of the specific implementation steps or specific apparatus components such as the claimed management module or the claimed task assignment station recited in Appellants' claims. When the claimed invention is viewed as a whole, and compared with Duncan, viewed as a whole, it is clear that the two are significantly different from each other.

Examiner disagrees. As stated in the Final rejection of Appellants' claims as presented above, Duncan discloses Appellants invention. While Duncan does not include the specific language and terms used by applicant, Duncan does disclose the functionality and comparable aspects and capabilities of Appellants' invention in an understandable language that presents the Duncan's invention in a manner such that it may be compared with Appellants' invention. Both inventions address the conduct of project management planning and activities.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Wynn Coggins
Supervisory Patent Examiner
(Conferee)



Jeffrey Smith
Primary Examiner
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Forest Thompson
Patent Examiner
January 13, 2003

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The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.